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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHOENIX, AZ

Date: **MAY 07 2010**

IN RE:

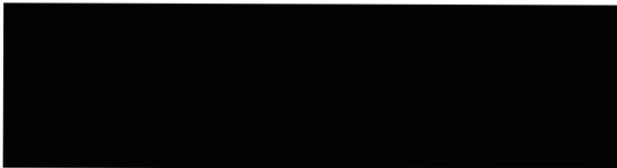
Applicant:



APPLICATION:

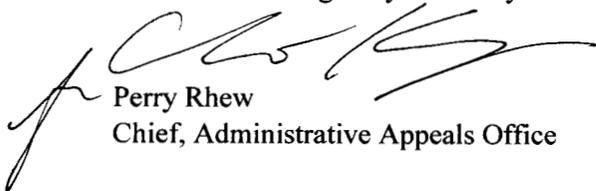
Application for Certificate of Citizenship under Former Sections 301 and 309 of the
Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409 (1975).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 28, 1975 in Mexico. His birth certificate indicates that his parents are [REDACTED] and [REDACTED] (also spelled [REDACTED] and [REDACTED]). The applicant's parents were married in Los Angeles, California in 1977. The applicant's father was born in Dearborn, Michigan on April 13, 1949. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Naturalization Act (the Act), 8 U.S.C. §§ 1401 and 1409, claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim. The director found that the applicant had failed to demonstrate that his father was physically present in the United States for 10 years prior to the applicant's birth, five of which while after the applicant's father's fourteenth birthday.

On appeal, the applicant, through counsel, maintains that his father was physically present in the United States from birth until 1953 and since 1965. See Applicant's Appeal Brief at 1, 5.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citations omitted). The applicant in the present matter was born in 1975. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1975), therefore applies to the present case.¹

Former section 301(a)(7) of the Act states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act also apply to his case. Prior to November 14, 1986, former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21.²

The applicant has submitted a birth certificate issued by the State of Jalisco, Mexico that establishes he was born in 1975 to [REDACTED] and [REDACTED]. The record also contains the applicant's parents' marriage certificate indicating that they were married in Los Angeles, California, in 1977. According to a March 2004 advisory opinion from the Library of Congress (LOC 2004-416), the Civil Code of 1953 governs parentage in the state of Jalisco. Under the Civil Code, parentage is established with respect to the father by voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. *See* LOC 2004-416. Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. *Id.*

The AAO finds that the applicant was legitimated in 1975, when his birth was officially registered and his birth record listed both his parents. Because he was legitimated prior to his twenty-first birthday, the applicant fulfilled the requirements of former section 309(a) of the Act.

The question remains whether the applicant can establish that his father was physically present in the United States for 10 years prior to 1975, five of which while over the age of 14 (after 1963). In this regard, the AAO notes that the applicant claims in his Form N-600, Application for Certificate of Citizenship, that his father resided in the United States from birth until 1953, and from 1967 until 1995. The record contains a copy of the applicant's father's birth certificate, his social security earnings statement (indicating employment income starting in 1970), notarized statements by the applicant's paternal grandmother (indicating that the applicant's father resided in the United States from birth until 1953), notarized statements made by acquaintances consistently indicating that the applicant's father resided in the United States since 1965, 1967, 1973, and the birth certificates of the applicant's siblings. Although the birth of the applicant and his older siblings in Mexico suggest that the applicant's father may have traveled back and forth to Mexico in the 1970s, the

² Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 13 of the INAA, *supra*. *See also* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.

preponderance of the evidence indicates that the applicant's father was physically present (and employed) in the United States since 1965. The documents submitted establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States during his early childhood and since 1965.

The applicant bears the burden of proof to demonstrate his claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.